

**STATE of DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>CHRISTINE SCRETCHING,</b>	:	
	:	
Charging Party,	:	
	:	
v.	:	<b><u>ULP No. 14-08-964</u></b>
	:	<b>Probable Cause Determination</b>
	:	<b>and Order of Dismissal</b>
	:	
<b>LILLIAN SHAVERS AND AMALGAMATED</b>	:	
<b>TRANSIT UNION, LOCAL 842,</b>	:	
	:	
Respondents.	:	

**Appearances**

*Christine Scretching, Charging Party, pro se*

*Lillian Shavers, President, ATU Local 842*

At the time of her discharge, Charging Party, Christine Scretching (Scretching), was an employee of the Delaware Transit Corporation (DTC). The State of Delaware is a public employer within the meaning of §1302 (p) of the Public Employment Relations Act (PERA). DTC is an agency of the State.

The Amalgamated Transit Union, Local 842, (ATU) is an employee organization within the meaning of 19 Del.C. §1302(i) and the exclusive bargaining representative of two bargaining units of fixed route operators, paratransit operators and maintenance employees of DTC. 19 Del.C. §1302(j). Lillian Shavers (Shavers) is the current President of ATU Local 842. Scretching was employed in a bargaining unit position prior to her discharge.

On or about August 1, 2014, Scretching filed an unfair labor practice charge alleging that

ATU Local 842 and its President had violated 19 Del.C. §1301(1) and (2); §1303; §1304(a); and §1307(b)(1), (2) and (3), which state:

§1301. Statement of policy.

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public employer. These policies are best effectuated by:

- (1) Granting to public employees the right of organization and representation;
- (2) Obligating public employers and public employee organizations which have been certified as representing their public employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations;

§1303. Public employee rights.

Public employees shall have the right to:...

- (1) Organize, form, join or assist any employee organization except to the extent that such right may be affected by a collectively bargained agreement requiring the payment of a service fee as a condition of employment.
- (2) Negotiate collectively or grieve through representatives of their own choosing.
- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.
- (4) Be represented by their exclusive representative, if any, without discrimination.

§1304 Employee organization as exclusive representative

- (a) The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive bargaining representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified a public employer shall not bargain in regards to matters covered by this chapter with any employee, group of employees or other employee organization.

§ 1307 Unfair labor practices

(b) It is an unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:

- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
- (2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.
- (3) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

Scretching asserts ATU Local 842 breached its duty of fair representation by failing or refusing to file a grievance contesting her termination. She cites several prior unfair labor practice charges which she asserts support her position.

On or about August 11, 2014, ATU Local 842 filed its Answer denying the allegations set forth in the Charge. It denies the cases cited by Scretching are material or relevant to the current Charge. The Answer also included New Matter in which the ATU asserts the Charge is untimely as it was not filed within the statutory 180 day time frame, noting Scretching was notified of her termination by notice dated January 7, 2014 and asserts in the Charge that she contacted ATU President Shavers in mid-January.

On August 22, 2014, Scretching filed a Response to New Matter denying the factual and legal positions set forth therein.

**DISCUSSION**

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

- a) Upon review of the Complaint, the Answer and the Response, the

Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.

- b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

The pleadings establish the following undisputed facts. Sretching was employed by DTC as a fixed route operator for approximately nine years. On or about January 10, 2012, she was injured and placed on a leave of absence from her duties. She received a notification of termination by certified mail in January, 2014. The letter, which was sent by DTC's Acting Chief Executive Officer, was dated January 7, 2014, and stated:

You have been absent from your position as a Fixed Route Operator for the Delaware Transit Corporation since January 10, 2012. Article I, Section 11-D, Seniority of the current Collective Bargaining Agreement and #6 of the Interest Arbitration decision dated January 1, 2013, clearly states:

***Seniority, regardless of nature, will be broken, cease to accumulate and no longer apply to an employee upon termination, resignation or break in continuous service in excess of one (1) year as a result of a layoff or leave of absence of any kind. Further, the Interest Arbitration decision states that "those bargaining unit members who are currently out on extended leave must return on or before the earlier of either (1) the date of their initial contractual leave period would elapse; or (2) December 31, 2013.***

Therefore, since you have failed to return by December 31, 2013, your employment with the Delaware Transit Corporation has been terminated effective Tuesday, December 31, 2013.

You have the right to appeal this decision through the grievance procedure in the appropriate Collective Bargaining Agreement between Local 842 Amalgamated Transit Union (AFL-CIO) and the Delaware Administration for Regional Transit, Delaware Transit Corporation. *Charge Exhibit 2.*

ATU Local 842 Local President Shavers was provided with a copy of this letter. No grievance was filed immediately following Scretching's termination.

Scretching alleges she "marked back on to work" on November 7, 2013 and then repeatedly attempted to contact DTC's Chief Transportation Supervisor for the North District (Vaughn) to find out when she could return to work. No grievance was filed at that time contesting DTC's purported failure to return her to work.

There are no facts on the face of the Charge which support the conclusion that ATU Local 842 and/or its President refused or failed to bargain in good faith with the public employer in violation of 19 Del.C. §1307(b)(2) or refused or failed to comply with any statutory or regulatory provision in violation of 19 Del.C. §1307(b)(3). Consequently, those charges are dismissed because they are unsupported.

Scretching asserts ATU Local 842, through President Shavers, refused to represent her and engaged in a "clear act of discrimination" because other bargaining unit members were assisted in filing grievances which resulted in reinstatement. A charge of discrimination requires, at a minimum, an allegation of disparate treatment in the exercise of rights established by the PERA supported by reasonable and related factual allegations. *Issa v. AAUP-DSU*, ULP 13-02-587, VIII PERB 5825, 5836 (2013). The charge does not contain any factual basis on which to conclude Scretching was subjected to disparate treatment. It also fails to state how the other grievances Scretching references were similar.

The duty of fair representation requires an exclusive bargaining representative to act honestly, in good faith, and in a non-arbitrary manner in representing any individual bargaining unit member. *Harris v. DSPC & ILA 1694-1*, ULP 11-10-827, VII PERB 5407, 5412 (2012, PERB). A union may not act either arbitrarily or in a discriminatory manner to ignore a meritorious grievance or process a meritorious grievance in a perfunctory manner. *Ross v. Christina Education Association*, ULP 10-12-779, VII PERB 4927, 4933 (2011), citing *Vaca v. Sipes*, 386 US 171, 195 (1967).

This does not, however, mean that an individual employee has an absolute right to have every complaint or concern processed as a grievance. *Issa v. AAUP-DSU*, ULP 13-02-887, VIII PERB 5825, 5838 (2013). A union is afforded significant latitude in fulfilling its statutory duties and may decline to take a grievance for many reasons. It may not, however, refuse to process a grievance for a discriminatory, arbitrary or bad faith reason. *Brooks v. AFSCME Local 640*, ULP 09-08-701, VII PERB 4483, 4489 (PERB, 2010). The test is essentially one of good faith.

Even when considered in a light most favorable to Charging Party, the allegations set forth in the pleadings fail to establish probable cause to believe that the Respondent acted irresponsibly by relying on Scretching's undisputed absence from work after December, 2013, and Article I, Section 11-D, of the collective bargaining agreement as the basis for declining to file a grievance on her behalf. The ATU's decision not to file a grievance does not rise to the level of "arbitrary, discriminatory or bad-faith" conduct and the Charge fails to assert any factual basis on which to conclude the Charging Party was treated in a discriminatory manner in violation of the PERA.

Concerning the timeliness of the Charge, 19 Del.C. §1308, Disposition of Complaints, provides that . . . "no complaint shall issue based on any unfair labor practice occurring more

than 180 days prior to the filing of the charge with the Board.” Consequently, if this statutory requirement is not satisfied the Public Employment Relations Board has no jurisdiction to process the charge.

In this case, Scretching alleges in her response to new matter that she contacted President Shavers by telephone on Thursday, January 30, 2014, to request a grievance be filed contesting her termination. Assuming this is to be true, the Charge is untimely as it was not filed until August 1, 182 days after January 30.

If the Charging Party did not contact President Shavers until July 21, 2014 (as alleged in the ATU’s Answer to the Charge), the contact was clearly well beyond the contractual period for filing a timely grievance. The ATU has an obligation under the law to abide by the negotiated provisions of the collective bargaining agreement, which includes the obligation to adhere to the time frames for grievances.

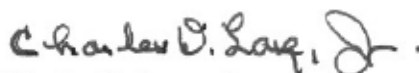
Scretching has failed to provide any basis in fact or law on which to conclude that the PERA may have been violated in any manner. Consequently, the Charge is dismissed in its entirety.

### **DETERMINATION**

The pleadings fail to establish probable cause to believe there has been any violation of the Public Employment Relations Act, when all allegations are considered in a light most favorable to the Charging Party.

**WHEREFORE**, the Charge is hereby dismissed, with prejudice.

Dated: October 23, 2014



Charles D. Long, Jr., Hearing Officer  
Del. Public Employment Relations Board